

PT 98-44

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

HUMAN SUPPORT SERVICES)		
Applicant)		
)	Docket #s	94-67-24
v.)		94-67-25
)	Parcel Index #s	07-24-204-012
THE DEPARTMENT OF REVENUE)		07-25-233-002
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Lynn Bersche appeared on behalf of Human Support Services.

Synopsis:

The hearing in this matter was held on January 15, 1997, at 1100 Eastport Plaza Drive, Collinsville, Illinois, to determine whether or not Monroe County Parcel Index Nos. 07-24-204-012 and 07-25-233-002 qualified for exemption from real estate taxation for part or all of the 1994 assessment year.

Mr. James Poschel, Executive Director of Human Support Services, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a charitable organization; secondly, whether the applicant owned the parcels here in issue during all or part of the 1994 assessment year; and lastly, whether the applicant either used these parcels for charitable

purposes or was in the process of adapting said parcels for charitable purposes during the 1994 assessment year. Monroe County Parcel Index No. 07-24-204-012 includes two lots, Nos. 12 and 14 in the Bradford-Phase V subdivision. Monroe County Parcel Index No. 07-25-233-002 includes Lots 4B, 5, 6, & 7 of Ditch's Addition to the City of Waterloo. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a charitable organization. It is also determined that the applicant owned Monroe County Parcel Index No. 07-24-204-012 during the period June 3, 1994, through December 31, 1994. The applicant owned Monroe County Parcel Index No. 07-25-233-002 during the period October 19, 1994 through December 31, 1994. It is further determined that Lot 12, which is a part of Monroe County Parcel Index No. 07-24-204-012, was in the process of being adapted for charitable use during the period June 3, 1994 through December 31, 1994. It is also determined that Lot 14, which is part of Monroe County Parcel Index No. 07-24-204-012, during the period June 3, 1994 through December 31, 1994, was not being adapted for charitable use nor used for charitable purposes. In addition, it is determined that Monroe County Parcel Index No. 07-25-233-002 during the period October 19, 1994 through December 31, 1994, was also not being adapted for charitable use nor used for charitable purposes. It is therefore determined that the Lot 12 portion of Monroe County Parcel Index No. 07-24-204-012 should be exempt from real estate tax for the period June 3, 1994 through December 31, 1994. It is also determined that the Lot 14 portion of Monroe County Parcel Index No. 07-24-204-012 and Monroe County Parcel Index No. 07-25-233-002 should remain on the tax rolls for the 1994 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that these parcels did not qualify for exemption for the 1994 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. On April 4, 1995, the Monroe County Board of Review transmitted to the Department Applications for Property Tax Exemption To Board of Review concerning each of the two parcels here in issue for the 1994 assessment year. (Dept. Ex. Nos. 1 & 1E)

3. On January 11, 1996, the Department advised the applicant that it was denying the exemption of each of these parcels because said parcels were not in exempt use during the 1994 assessment year. (Dept. Ex. Nos. 2 & 2A)

4. By a letter dated January 23, 1996, the Executive Director of the applicant requested a formal hearing in these matters. (Dept. Ex. No. 3)

5. The hearing in these matters, conducted on January 15, 1997, was held pursuant to that request.

6. The applicant was incorporated under the name of Monroe County Mental Health Services, Inc. on February 28, 1973, for the following purposes:

The purposes of the corporation as stated in its certificate of incorporation are: to engage in scientific, literary, educational and charitable activities within the meaning of section 501 (C) (3) of the Internal Revenue Code of 1954 leading to the promotion and conservation of the mental health of the people residing in Monroe County, Illinois and the adjacent areas; (Appl. Ex. No. 2)

7. On July 27, 1982, Articles of Amendment to the Articles of Incorporation were filed with the Secretary of State changing the name of the corporation to Human Support Services. (Appl. Ex. No. 2)

8. On July 2, 1993, the purpose clause of the Articles of Incorporation of the applicant were expanded to include the following:

Housing, employment services and specialized programming for emotionally ill, mentally retarded, developmentally disabled, alcoholics and drug abusing persons. (Appl. Ex. No. 2)

9. The applicant is Monroe County's community mental health provider. There is no housing authority in Monroe County. The applicant purchased the parcels here in issue with the intention of developing low income housing for chronically mentally ill individuals that have a diagnoses of schizophrenia, manic depressive illness, major personality disorders or who are developmentally disabled. Many of these persons are employed in the applicant's sheltered workshop, which is a supported employment environment. In addition, many of these persons are also involved in other programs operated by the applicant. (Appl. Ex. No. 3, Tr. pp. 13-16)

10. The Mental Health Endowment Foundation is a corporation organized to own and manage property used by the applicant and to develop an endowment to support community mental health in Monroe County. Docket No. 86-67-21 concerned certain property which the Mental Health Endowment Foundation owned, which was used by the applicant. In that decision, the Department determined that the applicant is a charitable organization. I take Administrative Notice of the decision in Docket No. 86-67-21, which concerned the Mental Health Endowment Foundation, and conclude that the applicant is a charitable organization.

11. The applicant acquired Monroe County Parcel Index No. 07-24-204-012 by a Trustee's deed dated June 3, 1994. Parcel Index No. 07-24-204-012 includes Lots 12 and 14 of the Bradford-Phase V. (Dept. Ex. No. 1A)

12. The applicant acquired Monroe County Parcel Index No. 07-25-233-002 by a warranty deed dated October 19, 1994. Parcel Index No. 07-25-233-002 includes Lots 4B, 5, 6, and 7 of Ditch's Addition to the City of Waterloo. (Dept. Ex. No. 1F)

13. The applicant derives its funds primarily from the Illinois Department of Mental Health and Developmental Disabilities, the Illinois Department of Alcohol and Substance Abuse, the Illinois Department of Vocational Rehabilitation, and county taxes. (Tr. p. 19, Appl. Ex. No. 4)

14. Before acquiring these parcels and continuing after their acquisition, the applicant submitted applications for funding single level low income apartment buildings for the

chronically mentally ill and developmentally disabled to various governmental lending agencies, so that it could build such buildings on these parcels. (Tr. p. 20, Dept. Ex. No. 3)

15. On June 24, 1994, the applicant submitted a loan application to the Farmers Home Administration, Community Facility Loan Program, for a loan to construct a low-income apartment building on Lot 12 of Monroe County Parcel Index No. 07-24-204-012. That loan was approved, and the applicant proceeded to construct a low-income apartment building on Lot 12, which was completed during August 1996. Eleven persons who are chronically mentally ill or developmentally disabled have occupied that apartment building on Lot 12 since August 1996. (Tr. pp. 20 & 21, 29 & 30, Dept. Ex. No. 3)

16. The rent paid by these eleven persons is either waived or reduced in cases of need. (Tr. p. 30)

17. The applicant did not have sufficient money to support a second loan application to the Farmers Home Administration for a Community Facility Loan Program for two additional low income apartment buildings. One of these two additional buildings is to be constructed on Lot 14 of Monroe County Parcel Index No. 07-24-204-012 and the other building is to be constructed on Monroe County Parcel Index No. 07-25-233-002. (Tr. p. 21)

18. Consequently, the applicant hired a consultant in the late fall of 1994. The consultant developed a financing plan using tax credits to be issued through the Illinois Housing Development Authority. This plan would provide sufficient funds to finance the construction of the two remaining buildings without placing an undue financial burden on the applicant. (Tr. p. 21)

19. This financing plan was a complicated one, which included a federal home loan bank, a local bank, the Illinois Housing Development Authority, and another local bank. This financing arrangement resulted in \$485,000.00 in financing for the development. This process included a syndicate in California, which ultimately sold the tax credits as the process developed. (Tr. pp. 21 7 22)

20. This plan required the transfer of Lot 14 of Monroe County Parcel Index No. 07-24-204-012 and Monroe County Parcel Index No. 07-25-233-002 to a separate corporation, Monroe County Apartments. Monroe County Apartments was to act as the operating general partner of an Illinois limited partnership, pursuant to the plan. (Tr. pp. 21-24)

21. On January 13, 1995, Lot 14 of Monroe County Parcel Index No. 07-24-204-012 and Monroe County Parcel Index No. 07-25-233-002 were conveyed by the applicant to Monroe County Apartments so that an application could be made for the financing using an Illinois limited partnership with Monroe County Apartments acting as the operating general partner. (Dept. Ex. No. 3)

22. This financing was approved at a later date and construction began. It is anticipated that this construction will be completed in March of 1997. (Tr. p.32)

23. No evidence was offered as to how these buildings would be operated by the Illinois limited partnership or whether or not the rent charged would be waived or reduced in cases of need.

24. As of the date of the hearing in this matter, Monroe County Apartments has applied for but not received a 501(C)(3) income tax exemption from the Internal Revenue Service. (Tr. p. 23)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS 200/15-65** provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;
(b) beneficent and charitable organizations incorporated in any state of the United States....
. . . or (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986. (Last paragraph effective September 16, 1994)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

To qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable or exempt purposes. Fairview Haven v. Department of Revenue, 153 Ill.App.3d (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

I conclude that the Department, in Docket No. 86-67-21, determined that the applicant is a charitable organization. I also conclude that the applicant owned Monroe County Parcel Index No. 07-24-204-012 during the period June 3, 1994 through December 31, 1994. I further conclude that the applicant owned Monroe County Parcel Index No. 07-25-233-002 during the period October 19, 1994 through December 31, 1994.

The Appellate Court has held property to be exempt from taxation where the applicant has adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist 1987).

The applicant acquired Monroe County Parcel Index No. 07-24-204-012 on June 3, 1994. On June 24, 1994, the applicant submitted a loan application to the Farmers Home Administration for a low-income apartment building to be constructed on Lot 12 of Monroe County Parcel Index No. 07-24-204-012. After that loan was approved, the applicant proceeded to construct a low-income apartment building on Lot 12. That building was completed and occupied by eleven of applicant's clients during August 1996. The rent paid by these clients is either waived or reduced in cases of need. In addition, the applicant has previously been determined by the Department to be a charitable organization. I therefore conclude that the Lot 12 portion of Monroe County Parcel Index No. 07-24-204-012 qualifies for exemption for the period June 3, 1994, through December 31, 1994.

In the Weslin Properties, Inc. case, Weslin Properties, on May 26, 1983, purchased a 24.3 acre tract to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983, Weslin Properties, Inc. approved a site plan and hired an architect. During 1984, construction on the Urgent Care facility began. In 1985, the Urgent Care Center was completed and occupied. The Court held that the Urgent Care facility qualified for exemption during 1983 but that the remainder of said parcel did not qualify for exemption during that year. The plans for the remainder of said parcel were not complete and Weslin Properties had not satisfied the Court that during 1983 all of the intended uses of the remainder of that parcel would qualify for exemption.

During 1994, there was no activity concerning Lot 14 of Monroe County Parcel Index No. 07-24-204-012 and Monroe County Parcel Index No. 07-25-233-002. This was because no financing had been obtained to prepare those areas for use. During the process of obtaining financing, and thirteen days after December 31, 1994, the applicant conveyed the Lot 14 portion

of Parcel No. 07-24-204-012 and Parcel No. 07-25-233-002 to Monroe County Apartments. The evidence and testimony failed to establish that Monroe County Apartments qualified as a charitable organization or that the use of the apartments on Lot 14 of Parcel No. 07-24-204-012 or Parcel No. 07-25-233-002 would be charitable.

Consequently, as in the Weslin Properties, Inc. case, I conclude that Lot 14 of Parcel No. 07-24-204-012 and Parcel No. 07-25-233-002 do not qualify for exemption, because it has not been established that Monroe County Apartments is a charitable organization or that the apartments under construction on those properties will qualify for exemption. It should also be pointed out that the applicant in these proceedings was not the owner of those properties at the time that the adaptation of those properties began.

I therefore recommend that the Lot 12 portion of Monroe County Parcel Index No. 07-24-204-012 should be exempt from real estate taxation for the period June 3, 1994 through December 31, 1994.

I further recommend that the Lot 14 portion of Monroe County Parcel Index No. 07-24-204-012 and Monroe County Parcel Index No. 07-25-233-002 remain on the tax rolls for the 1994 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
May 21, 1998